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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MELINDA GARCIA,

No. C 05-3754 CW

Plaintiff,

ORDER DENYING
PLAINTIFF'S
MOTION TO
EXTINGUISH LIEN

v.

AMBER HASKETT,

Defendant.

/

Plaintiff Melinda Garcia moves to extinguish a lien which Defendant Amber Haskett has filed in a case in Contra Costa County Superior Court, Long v. Sunrise Senior Living, Inc., No. MSC 04-1664, where Plaintiff Garcia is the attorney of record for the plaintiffs. Defendant opposes the motion to extinguish. The matter was taken under submission on the papers. Having considered all of the papers filed by the parties, the Court DENIES Plaintiff's motion to extinguish.

BACKGROUND

On or around August, 2003, Plaintiff and Defendant formed Garcia & Haskett, LLP (the Partnership), a California limited liability partnership engaging in the practice of law. In July, 2004, the Partnership entered into a written fee agreement to represent Mary Long in connection with her claims for personal injury and financial loss against Sunrise Assisted Living. Garcia

United States District Court

For the Northern District of California

1 Decl. ¶ 3. The fee agreement was signed by Defendant, but
2 Plaintiff says that she served as the lead attorney. Id. The
3 Partnership agreed to represent Ms. Long on a contingency basis.

4 On January 17, 2005, Plaintiff allegedly told Defendant that
5 she intended to dissolve the Partnership. Am. Compl. ¶ 10.
6 Plaintiff and Defendant entered into discussions regarding the
7 dissolution of the Partnership. During the negotiations, Ms. Long
8 decided that she would like Plaintiff to continue representing her.
9 Garcia Decl. ¶ 4. On or about March 1, 2005, Plaintiff and
10 Defendant agreed to dissolve the Partnership pursuant to an
11 "Agreement Dissolving Partnership," which was made effective as of
12 February 1, 2005. See Am. Compl., Ex. E, Dissolution Agreement.

13 With respect to Long, the Dissolution Agreement provides as
14 follows,

15 Haskett will be granted 5% of the net recovery to Garcia and
16 Garcia will be granted the remainder. For purposes of this
17 Agreement, Haskett acknowledges that on February 22, 2005 the
18 clients in this matter chose Garcia to be their attorney.
19 Garcia is to handle the case and, therefore, Haskett shall
20 have zero involvement with the case upon dissolution of the
Partnership. Garcia agrees, however, to immediately provide
Haskett with notice of settlement or disposition of the case
and to provide Haskett with an accounting regarding the
calculation of any share of the recovery due Haskett under
this Agreement.

21 Dissolution Agreement § 2.07(f). After agreeing to the
22 dissolution, Plaintiff formed the Garcia Law Group (GLG) and
23 Defendant formed the Haskett Law Firm (HLF). According to
24 Plaintiff, Ms. Long executed a new written fee agreement with GLG.

25 On September 16, 2005, Plaintiff filed a complaint in this
26 Court alleging, among other claims, that Defendant illegally
27 intercepted Plaintiff's confidential email communications during

1 the negotiation of the Dissolution Agreement. Among other
2 remedies, Plaintiff seeks rescission of the Dissolution Agreement.
3 She alleges that she would not have agreed to Defendant's
4 proportion of the net recovery in Long had she known Defendant was
5 reading her email. Am. Compl. ¶ 65.

6 On February 24, 2006, Defendant filed a notice of lien in
7 Long, alleging that the Dissolution Agreement "contractually
8 provides Lienholder with a claim against any settlement, recovery
9 or judgment in this action." Pl.'s Req. for Judicial Not., Ex. A,
10 Long, Notice of Lien. Defendant also alleges that the fee
11 agreement entered into between the Partnership and Ms. Long
12 contains provisions substantiating her lien. Id. Defendant
13 declares that had the Partnership not dissolved in accordance with
14 the Dissolution Agreement, she and Plaintiff would have divided any
15 Long profits in half, and therefore that she still has an interest
16 in Long as a successor-in-interest to the Partnership. Haskett
17 Decl. ¶ 5, 6, 10.

18 The amount in controversy in Long is "in the millions of
19 dollars," and the case is scheduled for a mediation session on
20 April 4, 2006. Garcia Decl. ¶ 5, 8. Plaintiff believes that if
21 the lien is not extinguished, it "will disrupt the mediation"
22 because it will "tie up any settlement proceeds such that the
23 Client will not receive any amount," and also tie up compensation
24 of Plaintiff's new co-counsel. Garcia Decl. ¶ 8.

25 DISCUSSION

26 In California, an attorney's lien is created only by contract,
27 "either by an express provision of an attorney fee contract or by

1 implication where the retainer agreement provides that the attorney
2 is to look to the judgment for payment for legal services
3 rendered." Carroll v. Interstate Brands Corp., 99 Cal. App. 4th
4 1168, 1172 (2002). In Hansen v. Jacobsen, 186 Cal. App. 3d 350,
5 354-55 (1986), the court held that a "previously discharged
6 attorney who has a contractual lien on a prospective judgment may
7 file a notice of lien in the pending action." (Emphasis in
8 original.)

9 Although filing a notice of lien in the underlying action is
10 not essential, an attorney may choose to do so, and "the common
11 practice of doing so has been held permissible and even advisable."
12 Carroll, 99 Cal. App. 4th at 1172. However, because the discharged
13 attorney is not a party to the underlying action, "a subsequent,
14 independent action is required to establish the amount of the lien
15 and enforce it." Hansen, 186 Cal. App. 3d at 356. The trial court
16 in the underlying action has no jurisdiction to determine the
17 existence or validity of an attorney's lien, nor can it entertain a
18 motion to terminate the lien or to expunge the notice of lien.
19 Carroll, 99 Cal. App. 4th at 1173-74. The notice of lien is thus
20 "essentially a 'superfluous document,'" the principle function of
21 which "seems to be to assist a discharged attorney who faces the
22 risk that a former client may 'settle around' the lien." Id. at
23 1176-77.

24 Under California law, therefore, Plaintiff may not bring a
25 motion to extinguish the notice of lien in Long, and its validity
26 must be determined in a "subsequent, independent action."
27 Plaintiff's justification for this Court's exercise of jurisdiction
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1 is that otherwise she will be left without recourse to expunge the
2 lien at this time. The court in Carroll recognized that the state
3 of the law provides no procedural safeguard to protect clients from
4 the filing of a false notice of attorney's lien, but decided that
5 "the task of designing protective procedures should be left to the
6 Legislature." 99 Cal. App. 4th at 1177. Based on principles of
7 federalism and comity, the Court likewise declines to entertain
8 Plaintiff's motion to extinguish the lien which Defendant has filed
9 in Long.

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IT IS SO ORDERED.

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Dated: 3/23/06

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Claudia Wilken

CLAUDIA WILKEN
United States District Judge

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